

CONFIDENTIAL  
Marcia Wagner – April 14, 2022

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:

5 CUSTOMS AND TAX ADMINISTRATION OF  
6 THE KINGDOM OF DENMARK  
7 (SKATTEFORVALTNINGEN) TAX REFUND  
8 SCHEME LITIGATION

9  
10  
11  
12  
13 C O N F I D E N T I A L

14  
15  
16 REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL  
17 EXAMINATION OF  
18 MARCIA WAGNER

19  
20 DATE: April 14, 2022

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22  
23  
24  
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1       M A R C I A   W A G N E R,  
2                   called as an expert witness, having been  
3       first duly sworn according to law, testifies as  
4       follows:

5

6

7

8       EXAMINATION BY MR. DEWEY:

9           Q     Good morning, Ms. Wagner.

10          A     Good morning.

11          Q     My name is Tom Dewey, and I  
12       represent Michael Ben-Jacob in this  
13       litigation.

14                You've been retained by SKAT as an  
15       expert witness in this case. Right?

16          A     Correct.

17          Q     And you have offered opinions about  
18       Mr. Ben-Jacob's compliance with New York  
19       professional standards. Right?

20          A     Correct.

21          Q     Are you admitted to practice in  
22       New York State?

23          A     No.

24          Q     Have you ever been admitted to  
25       practice in New York State?

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1                   After I had left, I believe shortly  
2           after I had left, it was acquired by K&L  
3           Gates. The Warner & Stackpole law firm  
4           became the Boston law firm of K&L Gates.

5                   MR. DEWEY: Move to strike.

6                   A     Similarly, just for consistency, I  
7           will change the resume, and I should, that  
8           Bingham Dana & Gould no longer exists. That  
9           is Morgan Lewis, so if you were to look at my  
10          resume, you would not see this law firm as in  
11          existence, as you would not see Warner &  
12          Stackpole in existence, so thank you for  
13          enabling me to correct my resume.

14                  Q     Do you think you should remove the  
15          reference to K&L Gates, Ms. Wagner?

16                  A     Perhaps I haven't really thought  
17          much about my resume. I really haven't given  
18          it any thought until this deposition.

19                  Q     Clearly.

20                        Okay. I want to focus again on the  
21          prohibited transaction rules, Ms. Wagner. I  
22          just have a few questions on that topic.

23                        Would you agree with me that a  
24          violation of the prohibited transaction rules  
25          standing alone will not lead to

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1       disqualification of a plan?

2           A     No.

3           Q     Okay. Will a violation of the  
4       prohibited transaction rules be remedied with  
5       actions other than the disqualification of a  
6       plan?

7           A     It depends on what the violation  
8       is. Can you be more specific?

9           Q     To your knowledge, has a plan ever  
10      been disqualified solely based on a violation  
11      of the prohibited transaction?

12          A     I believe there are two cases that  
13      I cited in my report that discuss such an  
14      issue.

15          Q     Other than those two cases, do you  
16      have anything else?

17          A     I believe there's another tax court  
18      case by the name of Shedco. which would be  
19      Shedco, S-H-E-D-C-O.

20          Q     Okay. And it's your testimony,  
21      just so I'm clear, that if a plan is  
22      otherwise wholly compliant, a violation of  
23      the prohibited transaction rules will lead to  
24      disqualification?

25          A     It depends on what the violation

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1 is.

2 And, by the way, I would need to  
3 review the Shedco case to make sure that that  
4 is an appropriate reference, so again, that's  
5 off the top of my head.

6 Q Okay. Focusing, Ms. Wagner, on the  
7 exclusive benefit rule, is it accurate to say  
8 that, and I quote, "No specific limitations  
9 are provided in section 401(a) with respect  
10 to investments which may be made by the  
11 trustees of a trust qualifying under section  
12 401(a). Generally the contributions may be  
13 used by the trustees to purchase any  
14 investments permitted by the trust agreement  
15 to the extent allowed by local law."

16 Is that correct?

17 MR. MAGUIRE: I'm sorry --

18 A Where are you reading from?

19 MR. MAGUIRE: Can you just go  
20 through that more slowly so we can  
21 follow?

22 MR. DEWEY: Sure.

23 Q Tab 13.

24 A Tab 13?

25 MR. MAGUIRE: Do we have a tab 13,